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EXAMINER

STEPHENS, JACQUELINE F

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,862

Applicant(s)

WULZ ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-18 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 7-10, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>Z</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities: the word "absorbent" is misspelled in line 11. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 12, 13, and 15, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer et al. USPN 4798603.

As to claim 1, Meyer discloses an absorbent article 10 which defines a front waist section 32, a rear waist section 32, and an intermediate section 34 which interconnects said front and rear waist sections (Figure 3), said absorbent article comprising: an absorbent body 16 containing, at least in part, a superabsorbent (col. 5, lines 23-30); the absorbent body defining a length and a width. The absorbent body comprises a second material 30 (col. 6, lines 3-10); wherein one or more regions of the absorbent body within the length and width of the absorbent body, such as the wrap layer 30 contains less absorbent material than other regions of the article. The second material

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in layer 30 is positioned in at least one of the one or more regions of absorbent body, which contain less absorbent material, Figure 4.

As to claim 2, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer meets the structural limitations of claim 1. Additionally, Meyer discloses the reduction of absorbent material and the positioning of the second material in one or more regions of the article promote flow of an insulating liquid from the one or more regions of the article containing less absorbent material to other regions of the article so as to change the fluid profile in the article (col. 2, lines 19-26, col. 6, lines 8-10 and 28-32).

As to claim 3, Meyer discloses the absorbent material (superabsorbent) is absent from one or more regions of the absorbent body in that the superabsorbent is not present in wrap layer 30, which is included in the absorbent body (col. 6, line 3-5).

As to claim 4, Meyer discloses the intermediate section comprises, at least in part, a crotch region. The wrap layer 30, represents a crotch region as broadly as

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claimed in that it resides in the intermediate section of the article. The absorbent material is absent from layer 30.

As to claim 5, Meyer discloses the second material, layer 30 is selected from one or more of the group consisting of surge, tissue, or airlaid materials (col. 6, lines 3-4).

As to claim 6, Meyer discloses a topsheet 14 and a surge material 18 positioned between the topsheet and absorbent body 16.

As to claim 12, Meyer discloses a composite system which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections (Figure 3). The system comprises: a superabsorbent-free material in that Meyer discloses the material for layer 30, which do not include a superabsorbent material (col. 6, lines 3-9); and an absorbent body 16, containing, at least in part a superabsorbent (col. 5, lines 23-30). The absorbent body defines a length and a width and includes a region within the length and the width in which superabsorbent is not present, such as layer 30. The superabsorbent-free material 30 in these regions of article adjacent the absorbent material.

As to claim 13, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

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See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer meets the structural limitations of claim 12. Additionally, by determining the appropriate materials and pore size gradient between layers, Meyer discloses the absence of absorbent in one or more regions of the article and the presence of the superabsorbent-free material in those regions is capable of promoting a reduction in time to move the insult from the superabsorbent-free material to the absorbent by changing the fluid profile in the article (col. 2, lines 13-34 and col. 6, lines 8-32).

As to claim 15, Meyer discloses the superabsorbent-free material comprises surge, tissue or airlaid materials (col. 6, lines 3-9).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer USPN 4798603. Meyer discloses the present invention substantially as claimed. However, Meyer does not disclose the insult is removed from the superabsorbent-free material to the absorbent material in less than about 2 minutes. The present application has described suitable materials for the topsheet, transport layer, and absorbent body (specification pages 16-22). Meyer discloses similar materials for the topsheet, wrap layer layer, and absorbent body (col. 4, line 28 through col. 10, line 41). When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 12.

7. Claims 11, 16-18, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer in view of Good et al. USPN 5846056.

As to claim 11, Meyer discloses the present invention substantially as claimed. However, Meyer does not disclose the backsheet 12 has a Water Vapor Transmission Rate of at least 2,500 g/m.sup.2/24 hr. Good discloses a backsheet having a water vapor transmission rates from about 1000 to about 5000 g/sq.m/24hr for the benefit of allowing sufficient transfer of vapor to reduce levels of skin hydration and rash (Good col. 8, lines 23-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backsheet of Meyer with the backsheet of Good for the benefits disclosed in Good.

As to claims 16, and 22-24, Meyer/Good discloses a disposable absorbent article 10, which comprises: a liquid-impermeable, vapor-permeable backsheet 12, which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours calculated according to a Water Vapor Transmission Test (Good col. 8, lines 23-62), a liquid permeable topsheet 14; a surge management layer 18 located between the backsheet 12 and topsheet; an absorbent body 16 located between said backsheet and said surge management layer 18. The absorbent body defining a length and a width and further includes a region 30 within the length and the width that contains less absorbent or nor absorbent (the layer 30 defines a region). A second material 30 is located between the backsheet and the surge management layer.

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The second material 30 is positioned in one or more regions of the article where the absorbent body is not present.

As to claim 17, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer/Good meets the structural limitations of claim 16. Additionally, Meyer/Good discloses the second material 30 allows fluid to be moved away from an insult area of the absorbent article to a region of the absorbent article where the absorbent is located so as to change the fluid profile in the diaper (Meyer col. 2, lines 13-34 and col. 6, lines 8-34).

As to claim 18, discloses the region 30 that contains less or no absorbent material (superabsorbent) is part of and overwraps the absorbent body 16, therefore it is also located in an insult area (col. 6, lines 3-9).

As to claim 21, Meyer/Good discloses the second material 30, comprises surge, tissue or airlaid materials (Meyer col. 6, lines 3-9).

Allowable Subject Matter

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8. Claims 7-10, 19, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761



April 29, 2004



JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700